

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
TACOMA DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

ARTHUR DITTO,

Defendant.

Case No. 3:19-cv-05792

**JOINT STATUS REPORT AND
DISCOVERY PLAN**

Plaintiff, the United States of America, and defendant Arthur Ditto, by and through their respective undersigned counsel, hereby submit the following Joint Status Report and Discovery Plan, pursuant to the Court's Orders entered on September 25, 2019 and October 31, 2019. Dkt. Nos. 4, 12. The parties provide as follows:

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Joint Status Report and Discovery Plan
(Case No. 3:19-cv-05792)

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U.S. DEPARTMENT OF JUSTICE
Tax Division, Western Region
P.O. Box 683
Washington, D.C. 20044
Telephone: 202-514-6056

1 1. Nature and Complexity of the Case

2 The United States commenced this action seeking to reduce to judgment and collect from
 3 Arthur Ditto outstanding civil penalties under 31 U.S.C. § 5321(a)(5), commonly known as an
 4 FBAR penalty, which were assessed against him, for his willful failure to timely report his
 5 financial interest in, and/or his signatory authority over, foreign bank accounts for the 2005
 6 through 2012 calendar years, as required by 31 U.S.C. § 5314 and its implementing regulations,
 7 as well as all associated penalties and interest. The total amount due and owing as of August 29,
 8 2017, as alleged in the Complaint, is \$3,965,778.00. Dkt. No. 1. On January 3, 2020, Mr. Ditto
 9 filed an Answer, alleging, among other things, that he was not properly removed from the OVDP
 10 and that he was not willful with regard to his FBAR reporting obligations. Dkt. No. 13.

12 2. Proposed Deadline for Joining Additional Parties

13 March 31, 2020.

14 3. Consent to Assignment to United States Magistrate Judge

15 No.

16 4. Discovery Plan

17 (A) *Initial Disclosures*: The parties will make their initial disclosures on or before
 18 February 15, 2020, as ordered by the Court.

19 (B) *Subjects, Timing, and Potential Phasing of Discovery*: The parties provide that
 20 discovery may be needed to determine the establishment of, control and authority
 21 over foreign bank accounts by Mr. Ditto, as well as the facts and circumstances
 22 surrounding his failure to file FBARs for the years at issue. Mr. Ditto also believes
 23 that discovery may be needed to determine whether Mr. Ditto was properly removed
 24
 25
 26

1 from the OVDP. The United States disputes that such discovery is proper or relevant
2 to any claim or defense.

3 Discovery does not need to be conducted in phases.

4 Discovery should be completed by January 15, 2021, with all responses to written
5 discovery due on or before this date. Any Motions to Compel Discovery shall be filed
6 within two weeks of discovery closing, by January 29, 2021.

7
8 (C) *Electronically Stored Information*: The parties do not anticipate any issues about
9 disclosure. At this time, because this case is at the onset of discovery, the parties do
10 not anticipate complex issues of ESI. However, as discovery progresses, this may
11 change.

12 (D) *Privilege Issues*: The parties do not anticipate employing confidentiality or protective
13 orders. When appropriate, the parties will claim the attorney-client privilege and
14 other applicable privileges, and maintain and produce a contemporaneous privilege
15 log.

16
17 (E) *Proposed Limitations on Discovery*: No changes should be made in the limitations on
18 discovery imposed under the Federal Rules of Civil Procedure.

19 (F) *Need for any Discovery Related Orders*: The parties do not require any other orders
20 under Rule 26(c) or 16(b) at this time.

21 5. Topics set forth in Local Civil Rule 26(f)(1)

22 (A) *Prompt Case Resolution*: The parties plan on promptly engaging in discovery. The
23 parties further agree to stipulate to as many facts as possible.
24
25
26

1 (B) *Alternative Dispute Resolution*: While the parties do not intend to engage in ADR at
2 this time, once discovery is completed a settlement conference may be requested.

3 (C) *Related Cases*: There are no related cases.

4 (D) *Discovery Management*: The parties plan on promptly engaging in discovery. The
5 parties agree to attempt to resolve discovery disputes informally before contacting the
6 Court.

7 (E) *Anticipated Discovery Sought*: The parties provide that discovery may be needed to
8 determine the establishment of, control and authority over foreign bank accounts by
9 Mr. Ditto, as well as the facts and circumstances surrounding his failure to file
10 FBARs for the years at issue. Additionally, Mr. Ditto anticipates that discovery may
11 be needed to determine whether he was properly removed from the OVDP. The
12 United States disputes that such discovery is proper or relevant to any claim or
13 defense.
14

15 (F) *Phasing Motions*: the parties do not believe phasing motions is necessary in this case.
16 The parties provide that all dispositive Motions should be filed by March 15, 2021.

17 (G) *Preservation of Discoverable Information*: The undersigned counsel have instructed
18 the parties to properly preserve discoverable information, and do not anticipate at this
19 time any issues related to preservation.
20

21 (H) *Privilege Issues*: The parties agree to handle inadvertent disclosures of privileged or
22 protected information as set forth in Fed. R. Evid. 502(b)(3) and Fed. R. Civ. P.
23 26(b)(5)(B).
24

(I) *Model Protocol for Discovery of ESI*: This case may involve the preservation and production of ESI, and the parties are agreeable to the adoption of the Court's Model ESI Agreement.

(J) *Alternatives to Model Protocol*: Not applicable.

6. The date by which discovery can be completed

January 15, 2021, with all responses to written discovery due on or before this date. Any Motions to Compel Discovery shall be filed within two weeks of discovery closing, by January 29, 2021.

7. Bifurcation

The parties agree that the case should not be bifurcated.

8. Pretrial Statements and Pretrial Order

The parties agree that the pretrial statements and pretrial order called for by Local Civil Rules 16(e), (h), (i), and (k), and 16.1 should not be dispensed with.

9. Other Suggestions for Shortening or Simplifying the Case

None at this time.

10. The date the case will be ready for trial

June 30, 2021.

11. Whether the Trial will be Jury or Non-Jury

Arthur Ditto requests a jury trial. The United States provides that whether a jury trial is appropriate would depend on the issues remaining to be adjudicated at trial.

12. Number of Trial Days Required

(K) 5 days. The parties further note that they agree to stipulate to as many facts as possible for trial purposes also.

13. The names, addresses, and telephone numbers of all trial counsel

For the United States:

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14. Dates on which the trial counsel may have conflicts in setting a trial date

None at this time.

15. Issues Regarding Service of Process

The only defendant in this case is Arthur Ditto. Mr. Ditto has been served.

16. Scheduling Conference

The parties provide that a scheduling conference before the Court enters a scheduling order is not needed in this case.

17. Disclosure Statement by Nongovernmental Corporate Parties

There are no nongovernmental corporate parties in this case.

Dated: January 29, 2020

RICHARD E. ZUCKERMAN
Principal Deputy Assistant Attorney General

/s/ Rika Valdman
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Dated: January 27, 2020

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